



In the  
**Supreme Court**  
of the  
**United States**

APRIL TERM, 1977

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NO. **76-1374**

PEOPLE OF THE STATE OF ILLINOIS,

*Respondent,*

vs.

LEO PALMERI,

*Petitioner.*

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**PETITION FOR WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF WINNEBAGO COUNTY**

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Petitioner prays that a Writ of Certiorari issue to review the Order Denying Leave to Appeal entered by the Illinois Supreme Court on January 28, 1977 and the judgment of the Appellate Court of the State of Illinois, Second Judicial District, entered on December 3, 1976

Opinions Below

The Opinion of the Appellate Court of Illinois, Second District, First Division, is reported at 3 Illinois Decisions 86, 358 N.E. 2d 86.

Jurisdiction

The Order of the Illinois Supreme Court denying the Petition for Leave to Appeal was entered on January 28, 1977, and the judgment of the Appellate Court of the State of Illinois, Second Judicial District, affirming the judgment of the Circuit Court of Winnebago County, Illinois was entered on December 3, 1976. A copy of the Opinion of the Appellate Court is appended and marked "Appendix A". The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

Questions Presented

1. Whether the interpretation of the state statute under which petitioner was prosecuted resulted in a denial of due process of law and equal protection of the laws.
2. Whether the interpretation of the state statute involved ran contra to the accepted principle that criminal or penal statutes must be strictly construed in favor of the accused.
3. Whether the petitioner was denied due process of law and equal protection of the laws when prosecuted under a complaint failing to charge a recognized offense under the law.
4. Whether petitioner was denied due process of law when he was required to defend nine separate charges on the same day in front of the trial judge conducting a bench trial.

Constitutional Provisions and Statutes Involved

The constitutional provisions involved are the "Due Process" clause of the Fifth Amendment to the United States Constitution, and the "Equal Protection" clause to the Fourteenth Amendment to the United States Constitution.

The statutory provision in issue in Illinois Revised Statutes 1973, Chapter 95-1/2, Paragraph 3-113(a). A copy of this provision is attached to this Petition as "Appendix B".

STATEMENT OF RELEVANT FACTS

Petitioner, in November, 1974, was charged with the offense of "Failing to Furnish Title to a Motor Vehicle," in violation of Illinois Revised Statutes 1973, Chapter 95-1/2, Paragraph 3-113(a), in nine separate criminal complaints. All nine cases were heard on the same day by the same judge in a bench trial.

Petitioner's attorneys moved for a verdict of not guilty at the conclusion of the State's case. Said motion was denied and petitioner was found guilty on five of the nine charges.

Petitioner filed a Post-Trial Motion for Judgment Not Withstanding the Verdict, or for a new trial. Among the grounds for this Motion was the insufficiency of the evidence to prove petitioner guilty of the charge beyond a reasonable doubt, that the verdict was contrary to the law, and that the evidence was insufficient to prove any criminal act under the specific statutory provision had been committed. The trial judge denied this motion. Both the trial court and the Court of Appeals of the State of Illinois, Second District, failed to



consider Illinois Revised Statutes, Chapter 95-1/2, Paragraph 3-113(a) as an entire section, and both courts, therefore, held that the State did not have to prove the first six lines of that section when charging an individual with a violation of that section.

There was also a variance between the charge of the original complaint against the petitioner and the Opinion of the Appellate Court. The complaint charged petitioner as a licensed used motor vehicle dealer with a violation of the statutory provision, while the Appellate Court Opinion discussed the name of Apollo Auto Sales as the licensed dealer. At the trial there was no evidence connecting petitioner with Apollo Auto Sales.

Petitioner appealed to the Appellate Court of the State of Illinois, Second District, and that Court affirmed the judgment of the trial court. Petitioner then filed, and was denied, a Petition for Leave to Appeal to the Illinois Supreme Court.

#### Reason Why Writ Should Be Allowed

Petitioner respectfully requests that this court should grant this Petition for Writ of Certiorari. Several basic concepts of criminal law and procedure are at issue in this petition and are deserving of this Court's attention and consideration.

The Illinois Motor Vehicle Code section which forms the basis for the criminal charge against the petitioner was not considered in its entirety by either the trial court or the Appellate Court. Petitioner contends that all the elements in the entire section are necessary and must be proved in a criminal complaint prosecuted by the State. The charges in the complaint are as follows:

"Leo Palmeri committed the offense of Failure to Furnish Title to a Motor Vehicle in that he, a licensed used motor vehicle dealer, did then and there sell or transfer his title or interest in and to a certain motor vehicle (described) to (named complainant) without executing a certificate of assignment and warranty of title to such motor vehicle and mailing or delivering such certificate of assignment and warranty of title within fifteen (15) days of such sale or transfer to the Secretary of State, in violation of Paragraph 3-113 Chapter 95-1/2, Illinois Revised Statutes."

The Court will note that the complaint does not include the first six lines of Chapter 95-1/2, Paragraph 3-113(a) of the Illinois Revised Statutes. Furthermore, at the trial, the facts contained in those first six lines were not put into evidence nor proved by the State. The Appellate Court also held that satisfaction of the first part of the statutory section was not necessary when prosecuting an individual under that section.

Petitioner contends that the interpretations of the statutory provision in question by both the trial and appellate courts ran directly counter to the principle that the criminal statutes are to be strictly construed. For no apparent reason, both courts arbitrarily severed the statutory section, when clearly the section should have been read and interpreted as a whole. Such an arbitrary interpretation, when viewed with the principle of strict construction of criminal statutes, denied petitioner due process of law, and equal protection under the law, both being violations of the United States Constitution.

Petitioner next contends that there are obvious inconsistencies between the original complaint charged against him and the opinion of the Appellate Court. The statute covers those individuals that are dealers, and the original criminal complaint named petitioner as a licensed dealer. However, the Appellate Court, in affirming the judgment of the trial court, made a finding that Apollo Auto Sales was a licensed dealer. Neither court concluded that there was any evidence connecting the petitioner with Apollo Auto Sales. In order to find the petitioner guilty under the said statutory provision, a necessary element of the proof was that the petitioner was a licensed dealer. This the State did not prove in prosecuting the case at the trial level, and the Appellate Court in reviewing the judgment did not conclude that there was any evidence proving the petitioner to be a licensed dealer. Such a failure of proof once again denied petitioner due process of law since the State had obviously not presented sufficient evidence to not only prove petitioner guilty of criminal conduct under the statute, but also failed to even place petitioner in the classification of individuals who were subject to that statutory provision.

The complaint, in referring to "Failure to Furnish Title to a Motor Vehicle," charges no offense under the law relating thereto. At the same time, there is no charge in the original complaint of failure to deliver to the Secretary of State an "Application for Certificate of Title" referred to in the Opinion of the Appellate Court. Again, the allegations in the complaint and part of the Opinion of the Appellate Court demonstrate a substantial variance. Here too, the inconsistent conclusions reached by the Appellate Court demonstrate that that court did not consider the evidence and proof submitted

in the trial. Failure of the Appellate Court to directly consider the facts, as presented, denies the petitioner due process of law and his right to appeal particular errors made before and during his trial.

Finally, petitioner submits that the complaint upon which petitioner was prosecuted did not apprise the petitioner of any charge against him, or enable him to prepare an adequate defense. The complaint charged petitioner with a non-existent offense and was based only upon a portion of the statutory section forming the basis of the charge. This contention is further supported by the fact that the Appellate Court, in its Opinion, reached conclusions substantially different from some of the allegations in the original complaint. Under due process of law, an individual is entitled to know the charges being brought against him in order that he may prepare an adequate defense to these charges. In the present case, the complaint did not apprise the petitioner of any violations of the law, since the statute cited in the complaint did not contain the language crucial to the complaint as presented. That is, the statutory provision did not state anything concerning "Failure to Furnish Title to a Motor Vehicle." Petitioner contends that as a result of the aforementioned inconsistencies, he was not able to adequately prepare his defense for trial, and in effect, was denied due process of law and equal protection of the law.

#### Conclusion

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.



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RESPECTFULLY SUBMITTED,

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APPENDIX A

No. 75-273

No. 75-274

No. 75-275

No. 75-276

No. 75-277

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT  
FIRST DIVISION

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PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
Plaintiff-Appellee,	)	Appeal from the Circuit
	)	Court of the 17th Judi-
v.	)	cial Circuit, Winnebago
	)	County, Illinois.
LEO PALMERI,	)	
Defendant-Appellant.	)	

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MR. JUSTICE SEIDENFELD delivered the opinion of the court:

In November of 1974, Leo Palmeri was charged in five separate criminal complaints with the offense of failing to furnish title to a motor vehicle in violation of Ill. Rev. Stat. 1973, ch 95-1/2, par. 3-113. All five cases were tried on the same day before the same judge without a jury and he entered judgments of guilty on

each charge. The court sentenced the defendant to pay a fine of five hundred dollars on each charge, and imposed jail sentences of varying lengths amounting to a total of seven months incarceration. The defendant appeals contending (1) the complaints did not charge an offense, (2) the purported offenses charged are not subject to the penalty imposed by the court, and (3) the State failed to prove the elements of the purported offenses beyond a reasonable doubt.

The complaints charged, in pertinent part, that on a given date in Winnebago County:

"Leo Palmeri committed the offense of Failure to Furnish Title to a Motor Vehicle, in that he, a licensed used motor vehicle dealer, did then and there sell or transfer his title or interest in and to a certain motor vehicle (described) to (named complainant) without executing a certificate of assignment and warranty of title to such motor vehicle and mailing or delivering such certificate of assignment and warranty of title within fifteen (15) days of such sale or transfer to the Secretary of State, in violation of Paragraph 3-113, Chapter 95-1/5, Illinois Revised Statutes."

When the various cases proceeded to trial, essentially the same evidence was presented by the State in each instance. The five complaining witnesses testified that the defendant, doing business as Apollo Auto Sales, sold each of them a used automobile during the summer of 1974. Each paid cash and was given a receipt indicating payment of the purchase price and a fee for the transfer of title. Despite repeated requests, none of

them received title to their automobile until sometime in late November, 1974, after having already sworn out a complaint against the defendant.

In addition to the testimony of the complaining witnesses, the State called David Dillevou, from the Secretary of State's office, who identified the five applications for certificate of title, each of which was received by his office on November 20 or November 21, 1974. Each was signed by "Apollo Auto Sales" and notarized by Leo Palmeri. Dillevou also testified that the dealer's license for Apollo Auto Sales had been issued in 1974 to Leo Palmeri, whose signature appeared on the application for the license.

The defendant first attacks each criminal complaint arguing that it failed to charge an offense. The charges were brought under the Motor Vehicle Code which provides in pertinent part:

"Transfer to or from dealer---Records.

If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner or the lienholder within ten (10) days after delivery to him of the vehicle, he need not send the certificate to the Secretary of State but, upon transferring the vehicle to another person other than by the creation of a security interest, shall promptly and within fifteen (15) days execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided therefor on the certificate or

as the Secretary of State prescribes, and mail or deliver the certificate to the Secretary of State with the transferee's application for a new certificate." Ill. Rev. Stat 1973, ch. 95-1/2, par. 3-113 (a).

The defendant maintains the complaint is fatally defective because it fails to allege that the defendant acquired title to the automobiles in question within the ten days after they were delivered to him. Recognizing that criminal statutes are to be strictly construed in favor of the accused, we still must ascertain the legislative intent (People v Kirkrand, 397 Ill. 588, 590 (1971) and in cases where the language is unambiguous, we are bound by the language of the statute. The section of the statute with which we are concerned here dictates the procedure to be followed by a dealer upon transfer of a used car to "another person other than by the creation of a security interest." That circumstance was properly outlined in the complaint quoted above, and the ten day provision mentioned by the defendant merely provides that under certain circumstances, a dealer need not forward certificates of title to the Secretary of State each time he comes into possession of an automobile for future resale. The ten day provision has nothing to do with the subsequent sale of the automobiles by the dealer. Thus, each complaint was not lacking in any essential element, and in fact, clearly apprised the defendant of the charge against him and enabled him to fully prepare his defense. People v. Laczny, 63 Ill. App. 2d 324, 330-31 (1965).

The defendant's second contention is that the purported offense charged is not subject to the penalty imposed by the court. The court based its sentences upon the following provision in the Motor Vehicle Code:

"Violations of this Chapter. (a) It is a Class C misdemeanor for any person to violate any of the provisions of this Chapter, except as provided in paragraphs (b) and (c) of this Section, unless such violation is by this Act or other law of this State declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this Chapter for which another penalty is not provided shall for a first and second conviction be guilty of a Class C misdemeanor; upon a third or subsequent conviction within one year after the first conviction such person shall be guilty of a Class B misdemeanor. Compliance with the registration provisions of this Act after apprehension or arrest shall not excuse imposition of the penalties herein provided nor be cause for dismissal of the arrest or of the summons nor be a basis for setting aside a conviction therefor." Ill. Rev. Stat 1973, ch. 95-1/2, par. 3-834(a), (b).

Pursuant to this provision, the court treated the first two convictions as Class C misdemeanors, and the next three convictions as Class B misdemeanors. Despite defendant's argument to the contrary, this provision also is unambiguous in its meaning, and the trial court properly exercised its discretion in passing sentence. (Cf. People v. Palmeri, 1 Ill. App. 3d 1033 (1971).) We find the sentences imposed by the trial court to be a proper application of the statute.



Finally, the defendant maintains that the State failed to prove his guilt beyond a reasonable doubt. There are three basic elements constituting the offense in question: (1) the defendant was a dealer of automobiles, (2) he transferred a vehicle to another person other than by creation of a security interest, and (3) he failed within fifteen days to execute the assignment and warranty of title, and mail or deliver it with the transferee's application for a new certificate, to the Secretary of State.

All three of these elements were clearly established in the instant case, and the proof was sufficient to find the defendant guilty beyond a reasonable doubt.

We therefore affirm the judgments.

Affirmed.

GUILD, P.J. concurs.

## APPENDIX B

Illinois Revised Statutes 1973, Chapter 95-1/2,  
Paragraph 3-113(a):

"Transfer to or from dealer - - Records. If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner or the lienholder within ten (10) days after delivery to him of the vehicle, he need not send the certificate to the Secretary of State but, upon transferring the vehicle to another person other than by the creation of a security interest, shall promptly and within fifteen (15) days execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding a security interest created or reserved at the time of the resale and the date of his security agreement, in the spaces provided therefor on the certificate or as the Secretary of State prescribes, and mail or deliver the certificate to the Secretary of State with the transferee's application for a new certificate."